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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

SEASALT DEL MAR, LP, a California
limited partnership

Plaintiff,

vs.

FIVE GREEKS LLC, a California limited
liability company d/b/a BEESALT
BALCONY,

Defendant.

CASE NO. '16CV0601 JAH KSC

COMPLAINT

1. Federal Unfair Competition
and False Designation of
Origin [15 U.S.C. §1125(a)]
2. Federal Unfair Competition
and False Or Misleading
Description or Representation
[15 U.S.C. §1125(a)]
3. California Trademark
Infringement [Cal. Bus. &
Prof. Code §14200, *et seq.*]
4. California Statutory Unfair
Competition [Cal. Bus. &
Prof. Code §17200 *et seq.*]
5. Common Law Unfair
Competition

DEMAND FOR A JURY TRIAL

1 Plaintiff makes the following allegations on information and belief.

2 **JURISDICTION AND VENUE**

3 1. This is a civil action for trademark claims arising under the trademark
4 laws of the United States (15 U.S.C. §§1051, *et seq*); the trademark laws of
5 California (Cal Bus & Prof Code §14200, *et seq.*); common law trademark law,
6 federal unfair competition laws, California unfair competition law, and common
7 law unfair competition.

8 2. This Court has jurisdiction of this action under 28 U.S.C.
9 §1331(federal question), 28 U.S.C. §1338 (original jurisdiction relating to
10 trademarks) and 15 U.S.C. §1121(trademarks).

11 3. This Court has jurisdiction over the supplemental claims arising
12 under state law pursuant to 28 U.S.C. §1338(a) and 28 U.S.C. §1367(a).

13 4. Venue is proper in this district under 28 U.S.C. §1391(b) because a
14 substantial part of the events or omissions giving rise to the claim occurred in this
15 district and because a substantial part of the property that is the subject of the
16 action is situated in this district.

17 **THE PARTIES**

18 5. Plaintiff Seasalt Del Mar, LP (hereinafter “SEASALT”) is a
19 California limited partnership with its principal place of business in the Southern
20 District of California.

21 6. Defendant Five Greeks LLC (hereinafter “FIVE GREEKS”) is a
22 California limited liability company with its principal place of business in the
23 Southern District of California. Defendant FIVE GREEKS does business under
24 the fictitious business name Beesalt Balcony and/or Beesalt. On information and
25 belief, defendant FIVE GREEKS has marketed products and/or services in the
26 Southern District of California.

27 **FACTUAL BACKGROUND**

28 7. Plaintiff SEASALT owns and operates a seafood bistro restaurant in

1 Del Mar, California. Plaintiff has been in business since February 2015.

2 8. Plaintiff has continuously used the mark SEASALT DEL MAR in
3 connection with restaurant, bar and catering services since at least February 2015.

4 9. Plaintiff has marketed and provided restaurant, bar and catering
5 services in the Del Mar, La Jolla, Solana Beach, Cardiff, Encinitas, Rancho Santa
6 Fe, Leucadia, Fairbanks Ranch, Rancho Penasquitos, Scripps Ranch, Poway,
7 Rancho Bernardo and San Diego, California areas and has acquired and/or
8 maintained common law trademark rights in those areas.

9 10. Plaintiff has a California service mark registration for “SEASALT
10 DEL MAR” for “Restaurant, Bar and Catering Services,” Registration Number
11 69806 issued April 14, 2015.

12 11. In or about late January 2016, plaintiff discovered that defendant
13 opened a new restaurant in Del Mar, California called “Beesalt Balcony,” which is
14 located exactly two miles from plaintiff SEASALT’s restaurant location.
15 Defendant is using exterior signage and a website at www.beesaltbalcony.com to
16 promote its restaurant. On information and belief, defendant is also using other
17 forms of advertising and marketing to promote the Beesalt Balcony name.

18
19 **FIRST CAUSE OF ACTION**
20 **(Federal Unfair Competition)**
(False Designation of Origin)
(15 U.S.C. §1125(a))

21 12. Plaintiff hereby incorporates by reference the allegations contained in
22 paragraphs 1 through 11 of the Complaint.

23 13. Defendant has used the word “BEESALT” in commerce on or in
24 connection with goods or services, including on defendant’s website
25 www.beesaltbalcony.com and on signage and advertisements for restaurant goods
26 and/or services.

27 a. Defendant’s use in commerce of the word “BEESALT”
28 constitutes a false designation of origin.

1 b. Defendant's use in commerce of the word "BEESALT"
2 constitutes a false or misleading description of fact, or false or
3 misleading representation of fact.

4 14. Defendant's use of the word "BEESALT" is likely to cause
5 confusion, or to cause mistake, or to deceive as to the affiliation, connection, or
6 association of defendant with plaintiff.

7 15. Defendant's use of the word "BEESALT" is likely to cause
8 confusion, or to cause mistake, or to deceive as to the origin, sponsorship, or
9 approval of defendant's goods or services.

10 16. Defendant's use of the word "BEESALT" in commercial advertising
11 or promotion misrepresents the nature, characteristics, qualities, or geographic
12 origin of defendant's and/or plaintiff's goods, services, or commercial activities.

13 17. Plaintiff believes that it has been or is likely to be damaged by
14 defendant's use of the word BEESALT.

15 18. Pursuant to 15 U.S.C. §1116, plaintiff requests an injunction against
16 defendant to prevent the violation of 15 U.S.C. §1125(a) and directing the
17 defendant to file with the court and serve on the plaintiff a report in writing under
18 oath setting forth in detail the manner and form in which the defendant has
19 complied with the injunction.

20 19. Pursuant to 15 U.S.C §1117, plaintiff is entitled to recover

- 21 a. defendant's profits;
 - 22 b. any damages sustained by the plaintiff;
 - 23 c. treble damages or profits;
 - 24 d. the costs of the action;
 - 25 e. reasonable attorney fees.
- 26
27
28

SECOND CAUSE OF ACTION
(Federal Unfair Competition)
(False Or Misleading Description Or Representation of Fact)
(15 U.S.C. §1125(a))

20. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 19 of the Complaint.

21. Defendant in connection with its goods or services has used and continues to use a false or misleading description of fact or a false or misleading representation of fact which:

- a. is likely to cause confusion, or to cause mistake, or to deceive as to the commercial activities by another person, or
- b. misrepresents the nature, characteristics or qualities of defendant's or plaintiff's goods, services, or commercial activities.

22. Plaintiff believes that it has been or is likely to be damaged by defendant's use of false or misleading descriptions or representations of fact.

23. Pursuant to 15 U.S.C. §1116, plaintiff requests an injunction against defendant to prevent the violation of 15 U.S.C. §1125(a) and directing the defendant to file with the court and serve on the plaintiff a report in writing under oath setting forth in detail the manner and form in which the defendant has complied with the injunction.

24. Pursuant to 15 U.S.C §1117, plaintiff is entitled to recover

- a. defendant's profits;
- b. any damages sustained by the plaintiff;
- c. treble damages or profits;
- d. the costs of the action;
- e. reasonable attorney fees.

THIRD CAUSE OF ACTION
(California Trademark Infringement)
(Cal. Bus. & Prof. Code §14200, *et seq.*)

25. Plaintiff hereby incorporates by reference the allegations contained in paragraphs 1 through 24 of the Complaint.

1 26. This cause of action is brought pursuant to Cal. Bus. & Prof. Code
2 §14200, *et seq.*

3 27. Plaintiff has a Certificate of Registration of Trademark for the words
4 “SEASALT DEL MAR” for International Class No. 43. This registration states,
5 the “Description of Services with which the Service Mark is Used: Restaurant, bar
6 and catering services.”

7 28. Defendant has used and is using, without the consent of the plaintiff,
8 a reproduction, counterfeit, copy, or colorable imitation of plaintiff’s registered
9 SEASALT DEL MAR service mark in connection with the sale, offering for sale,
10 or advertising of defendant’s goods or services on or in connection with which
11 that use is likely to cause confusion or mistake or to deceive as to the source of
12 origin of those goods or services.

13 29. Defendant is currently reproducing, counterfeiting, copying, or
14 colorably imitating plaintiff’s registered SEASALT DEL MAR service mark and
15 applying that reproduction, counterfeit, copy, or colorable imitation to defendant’s
16 menus, signs, prints, packages, wrappers, receptacles, or advertisements intended
17 to be used upon or in conjunction with the sale or other distribution in this state of
18 defendant’s goods or services. Defendant committed these acts with knowledge
19 that defendant’s use of the name BEESALT as a mark was intended to be used to
20 cause confusion or mistake or to deceive.

21 30. There is a likelihood of injury to business reputation of plaintiff or of
22 dilution of the distinctive quality of plaintiff’s registered SEASALT DEL MAR
23 mark, or plaintiff’s common law mark, or plaintiff’s trade name valid at common
24 law notwithstanding any absence of competition between the parties or the
25 absence of confusion as to the source of goods or services.

26 31. Defendant currently uses or unlawfully infringes upon plaintiff’s
27 registered SEASALT DEL MAR service mark without prior consent of plaintiff.
28

1 32. Defendant has not adopted and lawfully used plaintiff's SEASALT
2 DEL MAR registered service mark prior to the effective date of plaintiff's
3 registration.

4 33. Defendant's use of "BEESALT" on defendant's goods or services is
5 counterfeit. Defendant is using "BEESALT" as a spurious mark which is nearly
6 identical with, or substantially indistinguishable from, plaintiff's registered
7 "SEASALT DEL MAR" mark and which is used on or in connection with goods
8 or services for which plaintiff's genuine "SEASALT DEL MAR" mark is
9 registered.

10 34. Pursuant to Cal. Bus. & Prof. Code §14340, plaintiff is entitled to:

11 a. An order to enjoin defendant from the manufacture, use,
12 display, or sale of any counterfeits thereof of plaintiff's registered
13 SEASALT DEL MAR service mark;

14 b. Defendant to pay to plaintiff up to three times defendant's
15 profits and up to three times all damages suffered by plaintiff by
16 reason of the wrongful use, display, or sale of goods or services
17 utilizing plaintiff's registered SEASALT DEL MAR service mark;

18 c. The destruction of defendant's counterfeit BEESALT marks,
19 all means of making the marks, and all goods, articles, or other matter
20 bearing the marks, which are in the possession or control of the court
21 or any party to the action;

22 **FOURTH CAUSE OF ACTION**
23 **Statutory Unfair Competition)**
 (Cal. Bus. & Prof. Code §17200, *et seq.*)

24 35. Plaintiff hereby incorporates by reference the allegations contained in
25 paragraphs 1 through 34 of the Complaint.

26 36. This cause of action is brought pursuant to Cal. Bus. & Prof. Code
27 §17200, *et seq.*
28

1 37. Defendant has committed and continues to commit an unlawful,
2 unfair or fraudulent business act or practice within the meaning of Cal. Bus. &
3 Prof. Code §17200.

4 38. Defendant engaged and continues to engage in unfair, deceptive,
5 untrue or misleading advertising within the meaning of Cal. Bus. & Prof. Code
6 §17200.

7 39. Defendant has committed and continues to commit an act prohibited
8 by Cal. Bus. & Prof. Code §17500.

9 40. Pursuant to Cal. Bus. & Prof. Code §17203, plaintiff seeks:

10 a. Such orders or judgments, including the appointment of a
11 receiver, as may be necessary to prevent the use or employment by
12 defendant of any practice which constitutes unfair competition;

13 b. Restitution to plaintiff of any money or property, real or
14 personal, which may have been acquired by means of defendant's
15 unfair competition.

16 **FIFTH CAUSE OF ACTION**
17 **(Common Law Trademark Infringement)**

18 41. Plaintiff hereby incorporates by reference the allegations contained in
19 paragraphs 1 through 40 of the Complaint.

20 42. In addition to plaintiff's rights under federal law, plaintiff has valid
21 and existing state law rights with respect to the mark SEASALT DEL MAR.

22 43. Plaintiff has built up valuable goodwill in the mark SEASALT DEL
23 MAR.

24 44. Plaintiff's mark SEASALT DEL MAR has acquired secondary
25 meaning such that consumers associate the mark with plaintiff.

26 45. Defendant's use of the word BEESALT is likely to cause confusion,
27 mistake and deception in the public as to the source origin, sponsorship
28 endorsement or affiliation of plaintiff's goods and services.

46. Defendant continues to engage in its wrongful conduct with knowledge that its conduct is intended to cause confusion, mistake or deception.

47. Defendant's use of the words BEESALT on products or services is in violation of plaintiff's common law trademark rights and has caused or is likely to continue to cause damage to plaintiff by tarnishing the valuable reputation and image associated with plaintiff and its goods and services.

48. Defendant further has passed off its goods or services as those of plaintiff by its misleading representations to the consuming public.

49. Members of the consuming public are likely to and do believe that defendant's restaurant is associated or affiliated with plaintiff's restaurant.

50. As a direct and proximate result of defendant's wrongful conduct, defendant has caused plaintiff irreparable harm and injury.

51. Defendant acted with oppression, fraud or malice as a result of the above conduct allowing plaintiff to recover punitive damages for the sake of example and by way of punishing defendant.

PRAYER FOR RELIEF

WHEREFORE, plaintiff SEASALT prays for judgment and relief on all causes of action as more specifically detailed in each cause of action against defendant as follows:

1. Plaintiff recover damages in an amount to be proven at trial;

2. Plaintiff recover defendant's profits in an amount to be proven at trial;

3. Plaintiff recover up to treble damages and/or profits as allowed by statute in an amount to be proven at trial;

4. Plaintiff recovers punitive damages against defendant in an amount appropriate to punish or make an example of defendant;

5. A constructive trust over all monies paid to defendant (which monies are traceable to the defendant who is the current possessor and trustee of such

1 funds) to prevent unjust enrichment by defendant and to avoid dissipation and/or
2 fraudulent transfers of such monies by the defendant;

3 6. An injunction against defendant to prevent the violation of 15 U.S.C.
4 §1125(a);

5 7. An injunction pursuant to Cal. Bus. & Prof. Code §14340;

6 8. An order enjoining the defendant from continuing to engage, use, or
7 employ any unlawful, unfair or fraudulent business act or practice and unfair,
8 deceptive, untrue or misleading advertising and any act prohibited by Chapter 1
9 (commencing with Section 17500) of Part 3 of Division 7 of the Business and
10 Professions Code;

11 9. Restitution to plaintiff of any money or property, real or personal,
12 which may have been acquired by means of defendant's unfair competition

13 10. Attorney fees pursuant to, *inter alia*, 15 U.S.C. §1117 and California
14 Code of Civil Procedure §1021.5;

15 11. Costs of this suit;

16 12. Pre-judgment and post-judgment interest, as permitted by the court or
17 under statute; and such other and further relief as the court may deem necessary or
18 appropriate.

19 Dated: March 9, 2016

Respectfully submitted,

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21 DARREN J. QUINN

22 s/s Darren J. Quinn
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28 *Attorneys for Plaintiff*

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DEMAND FOR A JURY TRIAL

Plaintiff demands a trial by jury on all causes of action so triable.

Dated: March 9, 2016

Respectfully submitted,

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